(3)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 1277 /2003

APPELLANTS : 1. Manbodh S/o Late Bhaluram Verma, aged about 26 years.

2. Nand Kumar S/o Late Bhaluram Verma, aged about 19 years.

3. Dooj Bai @ Rajeshwari, W/o Santram Verma. – 26 years.

4. Santram S/o Late Bhaluram Verma, Aged about 29 years.

5. Umendra Bai W/o Late Bhaluram Verma, Aged about 46 years.
All R/o Village- Checher, P.S. Kasdol, District- Raipur (C.G.).

4360/03

Filed on 11/11/03
by Shri Ali Asgar Advocate

-Versus –

RESPONDENT : State of Chhattisgarh
Through P.S. Kasdol,
District-Raipur (C.G.)

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CR.P.C.

A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench: Hon'ble Shri Justice **Dilip Raosaheb Deshmukh**

Criminal Appeal No.1277/2003

Manbodh & others

Vs.

State of Chhattisgarh

Post for Orders today.

Sd/-
Dilip Raosaheb Deshmukh
Judge

A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

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Criminal Appeal No.1277/2003

Manbodh & others

Vs.

State of Chhattisgarh

Shri Prashant Jaiswal, Sr. Advocate with Shri Ali Asgar, Counsel for the appellants.
Shri U.K.S.Chandel, P.L. for the State

J U D G M E N T
(Delivered on 20th day of March 2006)

This appeal is directed against the judgment dated 06.09.2003 delivered by Shri P.K.Dave, learned 1st Additional Sessions Judge, Baloda Bazar in sessions case No.470/2002 whereby the appellants were convicted under Section 498-A and 304-B of I.P.C. and sentenced to undergo R.I. for two years and a fine of Rs.1,000/- each under Section 498-A and to undergo R.I. for 10 years each under Section 304-B I.P.C. and in default of payment of fine imposed under Section 498-A to undergo additional R.I. for six months.

2. It is not disputed that the deceased Phool Bai was married to the appellant Manbodh two years prior to her death. Appellant No.2 Nand Kumar and appellant No.4-Sant Ram are the brothers of the appellant No.1. Appellant No.3-Duj Bai is wife of

appellant No.4 and appellant No.5 is the mother of appellant No.1. The maternal home of the deceased is in village Deokirari. The appellants live in village Chhechar.

3. Briefly stated the prosecution story as revealed by the case diary statements of Brajesh P.W.2, Horilal P.W.1, Bodhram P.W.8 and Rajkumari P.W.9 being the brothers, father and sister-in-law respectively of the deceased is that soon after the marriage the appellants used to harass and beat Phool Bai on account of demand for dowry of Rs.30,000/-. It was not stated as to for what purpose the dowry amount was demanded, when it was demanded and in what manner Phool Bai was being harassed. It also appears that when Phool Bai became pregnant, Manbodh left her at her maternal home since he was going to Jammu for earning a livelihood. From the statements recorded under Section 161 Cr.P.C. of the above mentioned witnesses it is not borne out that the appellant No.1-Manbodh ever made a specific demand for dowry. The only fact that emerges is that when Phool Bai became pregnant and Manbodh left her at her maternal home, she told her father Horilal P.W.1, brother Brajesh P.W.2 and Bodhram P.W.8 and sister-in-law Rajkumari P.W.9 that Manbodh was pressurizing her for brining Rs.30,000/- for setting up a *Kirana* shop and that the other appellants were also asking her to bring money from her maternal home. On return of Manbodh to village Deokirari, the above mentioned witnesses advised him that unless he assures of proper behaviour with Phool Bai, they would not send Phool Bai with him. Phool Bai was also not willing to go with Manbodh and was crying. However, on

being assured of proper treatment, she left with the appellant-Manbodh for Chhechar.

4. It is alleged by the prosecution that within three months thereafter on 7.7.2002, Phool Bai consumed an insecticide Endosulphas. She was shifted to the Government hospital in Kasdol where she expired. Santosh Verma P.W.7, brother of the appellant immediately gave merg intimation Ex.P.7 at P.S. Shahdol stating that on 7.7.2002 Phool Bai was alone in the house for cooking food while all the other members of the family had gone to work in the field. When they returned at 2.30 P.M. they saw that Phool Bai was lying inside the house and froth was coming out of her mouth. On being asked by the appellant-Manbodh, she told that she had consumed Endosulphas but did not assign any reason therefor. She was immediately shifted to the Community Health Center, Kasdol but died.

5. Post-mortem was conducted by Dr. N. Bajpai P.W.13 on 8.7.2002 who found bluish discolouration of skin on whole of neck and right side of face (cheek). Underneath the skin the muscles of neck showed congestion and clotted blood. In front of trachea at the level of thyroid cartilage, there was congestion. Viscera was preserved, packed and sealed for examination by the F.S.L. It was opined vide Ex.P-8-A that mode of death of Phool Bai was due to asphyxia. Cause of death could not be ascertained. Duration of death was within 24 hours. Upon examination of Viscera and one tin box of insecticide

Endosulphas seized on 11-07-2002 from the place of occurrence vide Ex.p.4., the Forensic Science Laborary vide Ex.P.21 opined that they contained Endosulphas (organo chloro insecticide). After completion of investigation, the appellants herein were prosecuted and charged under Sections 498-A, 304-B of the I.P.C. and in the alternative under Section 306 I.P.C. The appellants abjured the guilt. The prosecution examined as many as 13 witnesses. Relying upon the evidence led by the prosecution, the trial Judge convicted and sentenced the appellants herein 304-B and 498-A I.P.C. as aforesaid in para-1 (Supra).

5. Shri Prashant Jaiswal, learned Sr. Advocate for the appellants herein has assailed the conviction of the appellants under Section 498-A and 304-B I.P.C. on the ground that the evidence led by the prosecution does not establish the guilt of the appellants for the aforesaid offences. It was contended that no report either prior or after the death of the prosecutrix was lodged by Horilal P.W.1 alleging harassment and demand of dowry by the appellants herein. The evidence led by the prosecution did not specifically show as to how much dowry was demanded and when. The testimony of Horilal in para 18 was referred to contend that the deceased lived peacefully with the appellant No.1 without there ever being any dispute. Brajesh P.W.2 also did not make any allegations against the appellant No.1. Para-7 of the testimony of Rajkumari P.W.9 and paras- 13, 18 & 19 of the testimony of Bodhram P.W.8 were also referred to show that there was no demand for dowry. It was also

contended that the case-diary statements of witnesses were recorded as late as on 28.09.2002 and prior to that there was no allegation or any report by Horilal P.W.1 regarding harassment on account of demand for dowry by the appellants. Referring to the testimony of Dr. Bhikam D.W.3 it was argued that Phool Bai was ill and the testimony of Santosh P.W.7 revealed that Phool Bai had consumed Endosulphas insecticide and committed suicide. In sum and substance, the learned counsel for the appellants contended that the evidence led by the prosecution fell short of the requisite proof to bring home the guilt of the appellants under Section 498-A and 304-B I.P.C.

6. On the other hand, Shri U.K.S.Chandel, learned P.L. while supporting the impugned judgment argued that the evidence of Horilal P.W.1, Brajesh P.W.2, Bodhram P.W.8 and Rajkumari P.W.9 clearly proved that Phool Bai was subjected to cruelty by the appellants herein on account of not bringing sufficient dowry. The presumption under Section 113-B of the Evidence Act was not rebutted by the appellants. He also contended that the autopsy report of Dr. N.Bajpai P.W.13 was suggestive of violence on the throat of Phool Bai prior to her death. In reply to a Court question, this witness had stated that the symptoms near the thyroid were suggestive of throttling.

7. Having heard rival contentions, I have gone through the record. Dr. N. Bajpai PW-13 who proved the autopsy report of Phool Bai Ex.P-20 has testified that Viscera of Phool Bai had also been preserved for chemical analysis. Sub Inspector Lambodar

Patel PW-12 has proved that on 11-07-2002, a tin box containing insecticide Endosulphas had been seized from the place of occurrence vide Ex.P-7. The report of examination of viscera by the Forensic Science Laboraroty Ex.P-21 proves beyond doubt that death of Phool Bai was on account of consumption of Endosulphas (organochloro insecticide). It is thus established that death of Phool Bai was on account of consumption of poisonous substance and otherwise than under normal circumstance. It is also undisputed that death of Phool Bai had occurred within 7 years of marriage with appellant No.1 Manbodh. The only point which requires consideration is whether soon before her death Phool Bai was subjected to cruelty or harassment by the appellants on account of demand for dowry.

8. Horil PW-1 has admitted in para-8 that he did not lodge any report at the Police Station regarding harassment of Phool Bai by the appellants on account of demand for dowry. He has also admitted in para-9 that Phool Bai used to write letters but never wrote any such letter to him that she was being harassed by the appellants on account of demand for dowry. He also admitted in para-10 that he did not disclose any such facts to the elder persons of the Village or to the Sarpanch or Panchas of Village-Deokirari. His testimony also shows that during the stage of pregnancy Manbodh had left Phool Bai at her maternal house for proper care saying that he was going to Jammu for earning his livelihood which shows the concern of Manbodh for Phool Bai. He also admitted that Manbodh had left Phool Bai at

his house in a stage of pregnancy so as to maintain good relations between them.

9. It nowhere emerges in the testimony of Horil PW-1, Brajesh PW-2, Bodhram PW-8, Rajkumari PW-9 who were the close relatives of the deceased that at any time after the marriage of Phool Bai with Manbodh or even after the death of Phool Bai, did they lodge any report with the police regarding any harassment of Phool Bai by the appellants on account of demand for dowry. Horil PW-1 has in para-18 clearly stated that Manbodh and Phool Bai lived peacefully and there was never any dispute between them. Brajesh PW-2 has also stated that the appellant Manbodh had left Phool Bai who was pregnant, at her maternal house when he left for Jammu to earn his livelihood. Bodhram PW-8 has also admitted in para-13 that Manbodh was even willing to live with Phool Bai at Village-DeoDeokirari. This shows that the appellant Manbodh had a deep concern for the wellbeing of Phool Bai.

10. Santosh, PW-7 brother of the appellant Manbodh has admitted that he had lodged merg intimation vide Ex.P-7 in Police Station-Kasdol on 07-07-2002 that Phool Bai while being alone in the house had consumed Endosulphas poison. He has also admitted that Phool Bai died in the Govt. Hospital at Kasdol. It is also pertinent to note that Panchnama on the dead body of Phool Bai was prepared vide Ex.P-2 on 07-07-2002 itself at 05.30 P.M. by Naib Tehsildar (Executive Magistrate) Shri A.S.Rana PW-10. It clearly shows that Dashoda Bai, mother of the deceased Phool

Bai was present when the inquest memo vide Ex.P-2 was prepared. This inquest memo does not disclose any suspicion of suicide having been committed by Phool Bai on account of demand for dowry by the appellants. If Dashoda Bai & Horil felt that death of Phool Bai had taken place under suspicious circumstances on account of non fulfillment of a demand for dowry for which she was being harassed, there is no doubt that both Horil & Dashoda Bai would have raised lot of hue and cry about this matter at the time of inquest and would have immediately lodged a report with the Police ~~who~~ which was already investigating the death of Phool Bai. The testimony of Sub Inspector Lambodar Patel PW-12 in para-6 shows that statements under Section-161 of Cr.P.C. of Dashoda Bai and Horil had been recorded on 08-07-2002 itself. The record shows that the prosecution did not produce these statements before the trial Court along with the documents under Section-173 of Cr.P.C. It was only after a direction given by the learned Additional Sessions Judge on 23-01-2003 that the statements of Dashoda Bai, Horil Verma, Bodhram, Rajkumari and Brajesh were produced in the Court. On going through the case diary statements of Dashoda and Horil Verma recorded by Sub Inspector Lamboder Patel PW-12 on 08-07-2002, it appears that these witnesses did not disclose in their statements that any demand of Rs.30,000/- was made by the appellants as dowry. Excepting a bald statement of harassment for not bringing sufficient dowry, no other specific acts were attributed to the appellants in the statements under Section-161 of Cr.P.C.

recorded on 08-07-2002. The suppression of these statements by the prosecution and non-production thereof till being ordered by the Court, creates a serious dent in the prosecution story. Not only this, Dashoda Bai who was present during the inquest on 07-07-2002 and had given statements under Section-161 of Cr.P.C. on 08-07-2002 was not examined by the prosecution, though cited as a witness. She was given up on 03-04-2002 by the prosecution. Dashoda Bai being the mother of the deceased, was the true repository of the information if any given by Phool Bai about any harassment by the appellants herein on account of demand for dowry. An adverse inference is drawn against the prosecution for her non-examination.

11. Rajkumari PW-9, the Sister-in-law of Phool Bai has admitted in para-7 that she did not disclose to any neighbour in village that Phool Bai was being harassed by her in-laws on account of demand for dowry. Horil PW-1 has admitted in para-15 that since the appellant equaled his status, he had got Phool Bai married to Manbodh. He also admitted that after the marriage of Phool Bai, he went several times to Village-Chhechar and Phool Bai had also visited Village-DeoKerrari many times. Not a single neighbour residing in Village-Chhechar or Village-Deo Kerrari has been examined to show that Phool Bai had disclosed that the appellants were harassing her on account of demand for dowry. Suspicion of death on account of harassment upon a demand for dowry does not find place in inquest Ex.P-2.

12. Sub Inspector Rajesh John PW-11 has admitted in para-6 that he had recorded the case diary statements of Horil PW-1, Rajkumari PW-9, Dashoda Bai and Bodhram PW-8 on 28-09-2002 i.e. almost 2 months and 21 days after the occurrence. Till then, no material was available about any harassment of Phool Bai by the appellants on account of any demand for dowry. The appellants were also arrested the same day i.e. on 28-09-2002. The case diary statement of Brajesh PW-2 was recorded on 06-10-2002 as admitted by Sub Inspector Rajesh John PW-11. In the abovementioned circumstances, it cannot be ruled out that the story of demand of Rs.30,000/- by the appellants was an afterthought being concocted after considerable delay.

13. Horil PW-1, Brajesh PW-2 and Bodhram PW-8 have admitted that they were present in Village-Deokirari during inquest and the last rites of Phool Bai. Bearing the natural human conduct in mind if Phool Bai had been harassed on account of not bringing sufficient dowry or had died under suspicious circumstances, these persons and Dashoda Bai who were the nearest relatives would have immediately lodged a report to the Police to that effect. The testimony of Rajkumari PW-9 further shows that Manbodh had gone to Jammu for a period of 5 to 6 months to earn a livelihood and had left Phool Bai in a stage of pregnancy at her maternal house. It also appears that Manbodh was asking for financial assistance of Rs.30,000/- for starting some business. This by no stretch of imagination can be constituted to be a demand for dowry.

14. Santosh PW-7 has stated that Phool Bai was suffering from stomach ache, headache and cough and had become very weak after pregnancy. In para-15 he has stated that Phool Bai was of good temperament and habits and never quarreled with the appellants. In cross-examination he has further stated that Phool Bai and Manbodh were living very peacefully though Phool Bai was insisting upon Manbodh to live with her at village-Deokirari. The appellants have examined the village Doctor Bhikam Prasad DW-3 and two witnesses Rajendra Kumar DW-1 & Rahi Bai DW-2. Rajendra Kumar DW-1 is a resident of Village-Deokirari i.e the maternal home of Phool Bai and had testified that from childhood Phool Bai was suffering from stomach ache and headache and sometimes used to become unconscious on that account. He has further stated that Phool Bai had told him that sometimes headache used to be so severe that it appeared that she would not survive. He also took Phool Bai for treatment at the instance of her father. Rahi Bai DW-2, a resident of Village-Chhechar has also stated that Phool Bai used to tell her that due to persistent stomach ache and headache she felt as if it would be better to die. This witness has also testified that Phool Bai was living peacefully with the appellants and also used to visit the other villagers in the village. Bhikham Prasad DW-3, Village Doctor has testified that he had treated Phool Bai for stomach ache and headache many times and felt that Phool Bai must have committed suicide on account of the above ailments. He witnessed the inquest Ex.P-2 and was thus not a stranger. The testimony of the witnesses mentioned above cannot be brushed

aside as a mere afterthought since it appears plausible that on account of persisting serious stomach ache and headache, Phool Bai had abruptly ended her life by consuming poison.

14. From the foregoing discussion, following points emerge:-

(A) Phool Bai committed suicide on 07-07-2002 at Village-Chhechar within 7 years of her marriage to appellant No.1 by consuming Endosulphas (organochloro insecticide).

(B) Horil PW-1 and Dashoda Bai, parents of Phool Bai though present at the inquest, did not disclose to the Police that Phool Bai was being harassed by the appellants on account of a demand for dowry of Rs 30,000/-.

(C) Horil PW-1 and Dashoda Bai in their statements under Section-161 of Cr.P.C. did not disclose that a demand of Rs.30,000/- as dowry was made by the appellants or anyone of them.

(D) The case diary statements of Horil PW-1 and Dashoda Bai recorded on 08-07-2002 by Sub Inspector Lambodar Patel PW-12 were suppressed by the prosecution and not filed along with documents under Section-173 of Cr.P.C.

(E) Dashoda Bai, a material witness being mother of the prosecutrix though cited by the prosecution was given up on 03-04-2002 by the prosecution.

(F) Horil PW-1 admitted that the appellant No.1 Manbodh and Phool Bail used to live peacefully. The evidence led

by the prosecution shows that the appellant No. 1 Manbodh had a deep concern for the wellbeing of Phool Bai. No report of any harassment of Phool Bai on account of demand for dowry by the appellants was lodged by Horil PW-1 either before or after the death of Phool Bai.

(G) Phool Bai was suffering from severe stomach ache and headache. The defence that she committed suicide by consuming poison on that account appears plausible.

(H) In view of the evidence led by the defence and the testimony of Santosh PW-7, the presumption under Section-113(b) of the Evidence Act does not arise against the appellants.

(I) In the abovementioned circumstances, it appears doubtful that Phool Bai had been subjected by the appellants to cruelty or harassment for, or on account with, any demand for dowry.

(J) The recording of case diary statements after considerable delay on 28-09-2002 i.e. more than two months and 21 days and the arrest of the appellants on the same day does not rule out the possibility that the allegation of demand of Rs.30,000/- as dowry by the appellants is an afterthought.

15. Having thus considered the evidence led by the prosecution in its entirety and in view of the facts emerging therefrom as narrated above, I am of the considered opinion

that the prosecution has failed to establish the guilt of the appellants under Section-304(B) & Section-498-A of IPC beyond the shadow of reasonable doubt. The benefit of doubt that the story of harassment on account of non fulfillment of demand for dowry of Rs.30,000/- is an afterthought goes to the appellants.

16. In the result, the appeal succeeds. The conviction of the appellants under Section-304(B) & Section-498-A of IPC and the sentences awarded thereunder are set aside. The appellants are acquitted after giving them the benefit of doubt and shall be set at liberty forthwith, if not required in any other case. Fine, if paid, shall be refunded to the appellants.

Sd/-
Dilip Raosaheb Deshmukh
Judge